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INTERSTATE COMMERCE COMMISSION

UNION PACIFIC
EQUIPMENT TRUST, SERIES C

Equipment Trust Agreement

DATED AS OF DECEMBER 1, 1971

BETWEEN

CHEMICAL BANK,
TRUSTEE

AND

UNION PACIFIC RAILROAD COMPANY

TABLE OF CONTENTS*

	PAGE
PARTIES	1
RECITALS	1
FORM OF TRUST CERTIFICATE.....	2
FORM OF GUARANTY FOR TRUST CERTIFICATE.....	6
CONSIDERATION FOR AGREEMENT.....	7

ARTICLE ONE

DEFINITIONS

SECTION 1.1. Definitions	7
Affiliate	7
Casualty Occurrences	7
Company	7
Corporate Trust Office	7
Cost	8
Deposited Cash	8
Engineer's Certificate	8
Equipment	8
Estimated Cost	8
Event of Default.....	8
Fair Value	9
holder	9
Investment Securities	9
Officer's Certificate	9
Opinion of Counsel.....	9
Original Issuance Date	9
Replacement Funds	10
Request	10

* This Table of Contents has been inserted for purposes of convenience and ready reference.

	PAGE
Trust Certificates	10
Trust Equipment	10
Trustee	10
hereby, herein, hereof, hereto, hereunder.....	10

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.1. Issuance of Trust Certificates	10
SECTION 2.2. Interests Represented by Trust Certificates; Dividends; Denominations; Dating; Maturity	11
SECTION 2.3. Form of Trust Certificates and Guaranty	13
SECTION 2.4. Execution by Trustee	13
SECTION 2.5. Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates	14
SECTION 2.6. Replacement of Mutilated or Lost Trust Certificates	15
SECTION 2.7. Temporary Trust Certificates	16
SECTION 2.8. Cancellation of Trust Certificates	16

ARTICLE THREE

REDEMPTION OF TRUST CERTIFICATES

SECTION 3.1. Right of Redemption	17
SECTION 3.2. Selection for Redemption; Notice of Redemption; Credits Against Sinking Fund Rental Payments.....	17
SECTION 3.3. Optional Sinking Fund; Redemption Provisions	20
SECTION 3.4. Payment Upon Redemption	21

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.1. Acquisition of Trust Equipment by Trustee	22
SECTION 4.2. Payments out of Deposited Cash	23

	PAGE
SECTION 4.3. Payment of and from Advance Rental	23
SECTION 4.4. Supporting Documents	24
Ratio of Cost of Trust Equipment to Trust Certificates....	25
SECTION 4.5. Application of Remaining Deposited Cash.....	25

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.1. Lease of Trust Equipment	26
SECTION 5.2. Equipment Subjected Hereto by Delivery and Marking...	26
SECTION 5.3. Substituted Equipment Subject Hereto; Additions to Trust Equipment	26
SECTION 5.4. Rental Payments	26
Limitation on Tax Liability.....	29
SECTION 5.5. Termination of Lease; Unclaimed Moneys	29
SECTION 5.6. Marking of Trust Equipment	30
Permissible Markings	31
SECTION 5.7. Maintenance of Trust Equipment; Casualty Occurrences ..	32
SECTION 5.8. Possession of Trust Equipment; Assignments	33
SECTION 5.9. Release and Replacement of Trust Equipment	35
Replacement Funds	35
SECTION 5.10. Company's Indemnities	35

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

SECTION 6.1. Events of Default Defined	36
Acceleration of Certain Rentals and Principal of Trust Certificates	38
Right of Trustee to Institute Judicial Proceedings.....	39
SECTION 6.2. Remedies	41
SECTION 6.3. Application of Proceeds	42
SECTION 6.4. Waiver of Default	43
SECTION 6.5. Obligations of Company Not Affected by Remedies	44

	PAGE
SECTION 6.6. Company to Deliver Trust Equipment to Trustee	44
SECTION 6.7. Limitations on Actions by Holders of Trust Certificates ..	45
SECTION 6.8. Remedies Cumulative	45

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.1. Company to Make Payments Provided for	46
SECTION 7.2. Guaranty to Holders of Trust Certificates	46
SECTION 7.3. Discharge of Liens	47
SECTION 7.4. Payment of Expenses; Recording	47
SECTION 7.5. Further Assurances	48

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.1. Acceptance of Trusts	48
SECTION 8.2. Application of Rentals	48
SECTION 8.3. Duties Concerning Registration, Exchange and Transfer of Trust Certificates	49
SECTION 8.4. Insuring or Possession of Trust Equipment Upon Indem- nification; Recording; Reliance on Documents.....	49
SECTION 8.5. No Obligation to Enforce Trust Unless Requested and Indemnified	49
SECTION 8.6. Assumption of No Default; May Rely on Notices and Other Documents	50
SECTION 8.7. Money Held by Trustee; Investments in Investment Securities	50
SECTION 8.8. No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensa- tion; Owning Trust Certificates; Moneys Held in Trust..	52
SECTION 8.9. Resignation by Trustee; Appointment of Successor Trustee	53
SECTION 8.10. Merger, Conversion or Consolidation of Trustee	54
SECTION 8.11. Trust Certificates Deemed Not Outstanding	55

ARTICLE NINE
MISCELLANEOUS

	PAGE
SECTION 9.1. Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.....	55
SECTION 9.2. Rights Limited to Parties and Holders of Trust Certificates	56
SECTION 9.3. Binding Upon Successors and Assigns	56
SECTION 9.4. Effect on Prior Agreements	56
SECTION 9.5. Supplemental Agreements; Termination	56
SECTION 9.6. Notices	57
SECTION 9.7. Counterparts	57
SECTION 9.8. Date Executed	57
SECTION 9.9. Effect of Headings	57
SECTION 9.10. New York Law to Govern	58
SECTION 9.11. Legal Holidays	58
TESTIMONIUM	58
SIGNATURES AND SEALS.....	58
ACKNOWLEDGMENTS	59
SCHEDULE A. DESCRIPTION OF TRUST EQUIPMENT.....	60

This **EQUIPMENT TRUST AGREEMENT**, dated as of December 1, 1971 between **CHEMICAL BANK**, a New York corporation, as trustee (hereinafter called the Trustee), and **UNION PACIFIC RAILROAD COMPANY**, a Utah corporation (hereinafter called the Company);

WHEREAS, the Company has constructed or will construct and transfer, or has contracted or will contract for the construction and transfer, to the Trustee of the railroad equipment described herein; and

WHEREAS, title to all such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, Union Pacific Equipment Trust, Series C, Equipment Trust Certificates (hereinafter called the Trust Certificates), are to be issued and sold from time to time in an aggregate principal amount not exceeding \$28,000,000, and the net proceeds (as hereinafter defined) of such sale, together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided, is to constitute a fund equal to the aggregate principal amount of the Trust Certificates so issued and sold, to be known as **UNION PACIFIC EQUIPMENT TRUST, SERIES C**, to be applied by the Trustee from time to time in part payment of the Cost (as hereinafter defined) of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS, the text of the Trust Certificates, and the guaranty to be endorsed on the Trust Certificates by the Company, are to be substantially in the following forms:

No. R-

Series C

CHEMICAL BANK,
Trustee

Principal hereof payable December 1, 1986

CHEMICAL BANK, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of December 1, 1971 (hereinafter called the Agreement), between the Trustee and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Company), hereby certifies that _____ or registered assigns, is entitled to an interest in the principal amount of _____ Dollars in UNION PACIFIC EQUIPMENT TRUST, SERIES C, payable as hereinafter provided on December 1, 1986, and to payment, until said last mentioned date (unless this Certificate is called for redemption prior to maturity pursuant to the applicable provisions hereinafter set forth with respect to redemption, in which case until the date fixed for redemption) of dividends on said principal amount at the rate of _____ % per annum, semi-annually on June 1 and December 1 in each year, from the June 1 or December 1, as the case may be, next preceding the date of this Certificate to which dividends on the Certificates have been paid (unless the date hereof is a date to which dividends on the Certificates have been paid, in which case from the date of this Certifi-

cate), or, if no dividends have been paid on the Certificates since the Original Issuance Date (as defined in the Agreement) of this Certificate, from such Original Issuance Date, together with interest at a rate equal to $\frac{1}{2}$ of 1% above the said dividend rate on any overdue principal and, to the extent that it shall be legally enforceable, on any overdue dividends. Dividends so payable on a dividend payment date, and punctually paid or duly provided for, will, subject to certain exceptions provided for in the Agreement, be paid to the holder of record at the close of business on the regular record date for such dividends, which regular record date shall be the fifteenth day (whether or not a business day) of the month next preceding such dividend payment date. Principal, dividends and interest will be payable at the corporate trust office of the Trustee in the Borough of Manhattan, City and State of New York, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement; provided, however, that payment of dividends may be made at the option of the Trustee by check mailed to the address of the person so entitled thereto as such address shall appear on the records of the Trustee. Any such dividends not so punctually paid or duly provided for shall forthwith cease to be payable to the registered holder on such regular record date and may be paid to the person in whose name this Certificate is registered at the close of business on a special record date for the payment of such defaulted dividends to be fixed by the Trustee, notice whereof shall be given not less than 10 days prior to such special record date, or may be paid, at any time in any other lawful manner, all as more fully provided in the Agreement.

This Certificate is one of an authorized issue of Equipment Trust Certificates (herein called the Certificates) in an aggregate principal amount not exceeding \$28,000,000,

all of which are substantially similar except as to serial number and principal amount, all issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Certificates, to which Agreement (a copy of which is on file with the Trustee at its corporate trust office in the Borough of Manhattan, City and State of New York) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the registered holder hereof thereunder, and to all of which the registered holder hereof, by accepting this Certificate, assents.

The Certificates are subject to the sinking fund provisions in the Agreement which provide for the payment by the Company to the Trustee, on or before December 1 in each year, commencing December 1, 1977, and continuing to and including December 1, 1985, of rentals in an amount sufficient to redeem \$2,500,000 aggregate principal amount of Certificates on December 1, 1977 and on each December 1 thereafter to and including December 1, 1985 and further provide that the Company may, at its option, increase rentals by up to \$2,500,000 on or before December 1 in each of the years 1982 through 1985 inclusive to redeem Certificates in corresponding principal amounts on December 1, 1982 and on each December 1 thereafter to and including December 1, 1985. As more fully provided in the Agreement, Certificates in such aggregate principal amounts are subject to redemption through the application of such rentals on December 1, 1977 and on each December 1 thereafter to and including December 1, 1985, on not less than 30 days' prior notice given as provided in the Agreement, at 100% of the principal amount thereof, together with accrued dividends to the date fixed for redemption. The Agreement also provides that the Company may, at its option, credit against such rentals Certificates retired otherwise than through the operation of the sinking fund, such credit

to be in an amount equal to the aggregate principal amount of such Certificates. The right to make optional sinking fund payments as provided in the Agreement shall be non-cumulative so that the failure to exercise such right in any year, in whole or in part, shall not increase the maximum optional sinking fund payment which may be made to the Trustee in any subsequent year.

The Certificates are issuable only as fully registered certificates in the denominations of \$1,000 and any multiple of \$1,000.

This Certificate is a fully registered certificate registrable as to transfer by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender hereof to the Trustee at its said corporate trust office, accompanied by an appropriate instrument of assignment and transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Certificate or Certificates in authorized denominations for the same aggregate principal amount and bearing the same maturity and dividend rate will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer of this Certificate, the Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Certificate may be declared due and payable, in the manner and with the effect and subject to the conditions provided in the Agreement.

This Certificate shall not be deemed in any wise a promise to pay of the Trustee.

This Certificate shall not be valid unless manually signed by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents, and its corporate seal to be hereunto affixed or hereon imprinted and to be attested by one of its Assistant Secretaries.

Dated:

CHEMICAL BANK,
Trustee,

By

ATTEST:

Vice President

.....
Assistant Secretary

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

UNION PACIFIC RAILROAD COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate, the prompt payment of the principal amount of said Certificate, and of the dividends thereon specified in said Certificate, with interest at a rate equal to $\frac{1}{2}$ of 1% above the dividend rate of said dividends on any overdue principal amount and to the extent that it shall be legally enforceable on any overdue dividends, all in accordance with the terms of said Certificate and the Agreement referred to therein.

UNION PACIFIC RAILROAD COMPANY,

By
Vice President—Finance

By
Treasurer

; and

WHEREAS, it is desired to secure to the holders of the Trust Certificates, the payment of the principal amount

thereof at maturity as hereinafter more particularly provided, with dividends thereon until said principal is paid in full, as hereinafter provided, payable semi-annually on June 1 and December 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

Definitions

SECTION 1.1. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Company. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession of 50% or more of the voting power of such corporation or the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Casualty Occurrence shall mean any occurrence specified in Section 5.7 to be a Casualty Occurrence.

Company shall mean Union Pacific Railroad Company, a Utah corporation, and any assignee of its rights under this Agreement pursuant to Section 5.8.

Corporate Trust Office shall mean the corporate trust office of the Trustee, in the Borough of Manhattan, the City and State of New York, at which the corporate trust business of the Trustee shall, at any particular time, be principally administered.

Cost, when used with respect to Trust Equipment not built by the Company, shall mean the actual cost thereof and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or the accounting rules of such other Federal governmental authority having jurisdiction over the accounts of the Company, or, to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, sound accounting practice and with respect to Trust Equipment built by the Company shall mean so-called "car builder's cost" which shall include direct cost of labor and material and overhead, but shall exclude any manufacturing profit.

Deposited Cash shall mean the aggregate of (a) cash on deposit with the Trustee as provided in the first sentence of Section 2.1 hereof and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.7 hereof, (b) any advance rentals on deposit with the Trustee pursuant to Section 5.4(A)(1) hereof, and (c) any sums restored to Deposited Cash from rentals pursuant to Section 5.4(B)(1)(b) hereof and on deposit with the Trustee.

Engineer's Certificate shall mean a certificate signed by an engineer, appraiser or other expert (who may be an employee of the Company) satisfactory to the Trustee.

Equipment means standard-gauge railroad equipment (other than passenger cars and work equipment) which shall have been first put into operation after November 30, 1971.

Estimated Cost of any Trust Equipment shall mean the estimated cost thereof specifically set forth herein or in any supplement hereto.

Event of Default shall mean any event specified in Section 6.1 to be an Event of Default.

Fair Value of any unit of Trust Equipment shall be deemed to be the Cost thereof less depreciation accrued thereon computed by the straight-line method at the rate of six and two-thirds per cent ($6\frac{2}{3}\%$) of said Cost for each full year (but not pro rata for any part of a year) from the date on which the unit was first put into operation to the date as of which the Fair Value is so to be determined.

The word *holder* shall mean the registered owner of a Trust Certificate.

Investment Securities shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal, (b) commercial paper given a rating of "prime" or better (or a comparable rating if such rating system is changed) by the National Credit Office or a successor thereto or a similar rating service substituted therefor by the Company and (c) certificates of deposit of or time deposits in banks or trust companies incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least \$50,000,000.

Officer's Certificate shall mean a certificate signed by either the Chairman of the Board and Chief Executive Officer, the Vice Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company or in the case of any certificate delivered pursuant to Section 4.4(b) by any of the foregoing or by the General Superintendent of Motive Power and Machinery of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who may be (1) an employee of or counsel to the Company or (2) other counsel satisfactory to the Trustee.

Original Issuance Date means, with respect to any Trust Certificate, the earliest of (a) the date of such Trust Certif-

icate or (b) the date or dates of any other Trust Certificate or Trust Certificates (including Trust Certificates issued in lieu of mutilated, lost, destroyed or stolen Trust Certificates pursuant to Section 2.6 hereof) evidencing all or a portion of the same principal interest as that evidenced by such particular Trust Certificate.

Replacement Funds shall mean any moneys specified in Section 5.9 to be Replacement Funds.

Request shall mean a written request for the action therein specified, delivered to the Trustee and signed on behalf of the Company by either the Chairman of the Board and Chief Executive Officer, the Vice Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company.

Trust Certificates shall mean all Trust Certificates issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean Chemical Bank, and, subject to the provisions of Article Eight hereof, any successor Trustee hereunder.

The words *hereby*, *herein*, *hereof*, *hereto*, *hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE TWO

Trust Certificates and Issuance Thereof

SECTION 2.1. *Issuance of Trust Certificates.* The net proceeds (excluding premium and accrued dividends, if any, which shall be paid to the Company) of the sale of the Trust Certificates shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. At the same time the Company shall, if necessary, deposit with the Trustee any

advance rental payable by the Company to the Trustee under Section 5.4(A)(1) hereof. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates substantially in the form set forth herein with the guaranty thereon executed by the Company and in the aggregate principal amount so sold, having maturities and bearing dividends at the rate specified in such Request.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$28,000,000 except as otherwise herein provided.

SECTION 2.2. *Interests Represented by Trust Certificates; Dividends; Denominations; Dating; Maturity.* Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said principal amount at the rate per annum specified by the Company in the Request delivered under Section 2.1 hereof, payable at the Corporate Trust Office of the Trustee, as set forth in the Trust Certificates, from the dividend payment date next preceding the date of such Trust Certificate to which dividends on the Trust Certificates have been paid (unless the date thereof is a date to which dividends on the Trust Certificates have been paid, in which case from the date of such Trust Certificate), or, if no dividends have been paid on the Trust Certificates since the Original Issuance Date of such Trust Certificate, from such Original Issuance Date. Dividends so payable on a dividend payment date, and punctually paid or duly provided for, will, subject to certain exceptions provided for herein, be paid to the persons in whose names the Trust Certificates are registered at the close of business on the regular record date for such dividend

which shall be the fifteenth day (whether or not a business day) of the month next preceding such dividend payment date. The Trust Certificates shall be dated the date of issuance and shall be in denominations of \$1,000 and any multiple of \$1,000 and shall be numbered consecutively.

Any dividend on any Trust Certificate which is payable, but is not punctually paid or duly provided for, on any dividend payment date (herein called Defaulted Dividends) shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder. The Company may provide for the payment of Defaulted Dividends by giving notice to the Trustee in writing of the amount of Defaulted Dividends to be paid on each Trust Certificate and the date of the proposed payment and by the deposit with the Trustee (or by making arrangements satisfactory to the Trustee for deposit with the Trustee) prior to the date of the proposed payment of an amount of money equal to the aggregate amount proposed to be paid in respect of Defaulted Dividends, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Dividends. After receipt by the Trustee of such notice, the Trustee shall pay Defaulted Dividends, at its election in each case, as provided in either subparagraph (1) or (2) below, provided in either case that the Trustee receives from or on behalf of the Company prior to the date of the proposed payment, an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Dividends:

(1) The Trustee may elect to make payment of any Defaulted Dividends to the persons in whose names the Trust Certificates are registered at the close of business on a special record date for the payment of such Defaulted Dividends, which special record date shall be fixed by the Trustee and shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed

payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Dividends and the special record date therefor to be mailed, first class postage prepaid, to the persons in whose names the Trust Certificates are registered, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Dividends and the special record date therefor having been mailed as aforesaid, such Defaulted Dividends shall be paid to the persons in whose names the Trust Certificates are registered on such special record date and shall no longer be payable pursuant to the next succeeding subparagraph; or

(2) The Trustee may make payment of any Defaulted Dividends in any other lawful manner which, after receipt of the notice of the proposed payment, the Trustee shall deem practicable.

The principal amount of the Trust Certificates shall become due on December 1, 1986, subject, however, to the provisions of Article Three hereof respecting redemption of Trust Certificates prior to such maturity date.

SECTION 2.3. *Form of Trust Certificates and Guaranty.* The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 7.2 hereof provided shall be in substantially the forms hereinbefore set forth.

SECTION 2.4. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its Vice Presidents and its corporate seal or a facsimile thereof shall be attested by the manual signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on

any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by this Section 8.7 shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder or under any supplement hereto.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement or of any supplement hereto, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in such Investment Securities and at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including any premium and accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 5.4(B)(1) hereof, an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.8. *No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Held in Trust.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any builder thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee and may act as Trustee under other instruments under which obligations of the Company are outstanding.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of itself and the holders of the Trust Certificates.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

SECTION 8.9. Resignation by Trustee; Appointment of Successor Trustee. If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *Trust Certificates Deemed Not Outstanding.* In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any direction, notice, request, consent or waiver under this Agreement, Trust Certificates which are owned by the Company or an Affiliate (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, notice, request, consent or waiver, only Trust Certificates which the Trustee knows are so owned shall be so disregarded.

ARTICLE NINE

Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *Rights Limited to Parties and Holders of Trust Certificates.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon Successors and Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

SECTION 9.7. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 9.8. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

CHEMICAL BANK,

as Trustee,

By

Vice President

ATTEST:

.....
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By

Vice President—Finance

ATTEST:

.....
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 10th day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John L. Bervar
Notary Public

JOHN L. BERVAR
Notary Public, State of New York
No. 41-5303890
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1972

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 11th day of January, 1972, before me personally appeared W. S. Cook, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Galpine
Notary Public

ELIZABETH L. GALPINE (12224)
Notary Public, State of New York
No. 30-6451000
Qualified in Nassau County
Certificate Filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1972

SCHEDULE A**Description of Trust Equipment**

No. of Units	Description	Estimated Cost	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive	332,000	6,640,000
Total Estimated Cost			<u>\$35,993,300</u>

enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

SECTION 8.6. *Assumption of No Default; May Rely on Notices and Other Documents.* The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the default or Event of Default desired to be brought to the attention of the Trustee. As to any fact or matter, the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 8.7. *Money Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, without liability for interest thereon save as may be agreed upon between the Trustee and the Company.

Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and

(f) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.4 hereof and not theretofore paid, whereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at a rate equal to $\frac{1}{2}$ of 1% above the rate of such

dividends, to the extent legally enforceable, on any portion thereof then or thereafter overdue.

In addition, in case one or more of the Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.4(B)(3), (B)(4) or (B)(5) when and as the same shall have become due and payable hereunder and such default shall have continued for a period of 30 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency, or in case a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization shall have been appointed for the Company or for its property, or in the case of any other judicial proceedings relative to the winding up or liquidation of the affairs of the Company, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or

any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by this Section 8.7 shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder or under any supplement hereto.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement or of any supplement hereto, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in such Investment Securities and at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including any premium and accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 5.4(B)(1) hereof, an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.8. *No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Held in Trust.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any builder thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee and may act as Trustee under other instruments under which obligations of the Company are outstanding.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of itself and the holders of the Trust Certificates.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

SECTION 8.9. *Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *Trust Certificates Deemed Not Outstanding.* In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any direction, notice, request, consent or waiver under this Agreement, Trust Certificates which are owned by the Company or an Affiliate (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, notice, request, consent or waiver, only Trust Certificates which the Trustee knows are so owned shall be so disregarded.

ARTICLE NINE

Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, *viz.*:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *Rights Limited to Parties and Holders of Trust Certificates.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon Successors and Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

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SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

CHEMICAL BANK,

as Trustee,

By

Vice President

ATTEST:

.....
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By

Vice President—Finance

ATTEST:

.....
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 10th day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John L. Bervar
Notary Public

JOHN L. BERVAR
Notary Public, State of New York
No. 41-5303890
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1972

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On this 11th day of January, 1972, before me personally appeared W. S. Cook, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Galpine
Notary Public

ELIZABETH L. GALPINE (12224)
Notary Public, State of New York
No. 30-6451000
Qualified in Nassau County
Certificate Filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1972

SCHEDULE A**Description of Trust Equipment**

No. of Units	Description	Estimated Cost	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive	332,000	6,640,000
Total Estimated Cost			<u>\$35,993,300</u>

enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

SECTION 8.6. *Assumption of No Default; May Rely on Notices and Other Documents.* The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the default or Event of Default desired to be brought to the attention of the Trustee. As to any fact or matter, the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 8.7. *Money Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, without liability for interest thereon save as may be agreed upon between the Trustee and the Company.

Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and

(f) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.4 hereof and not theretofore paid, whereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at a rate equal to $\frac{1}{2}$ of 1% above the rate of such

dividends, to the extent legally enforceable, on any portion thereof then or thereafter overdue.

In addition, in case one or more of the Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.4(B)(3), (B)(4) or (B)(5) when and as the same shall have become due and payable hereunder and such default shall have continued for a period of 30 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency, or in case a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization shall have been appointed for the Company or for its property, or in the case of any other judicial proceedings relative to the winding up or liquidation of the affairs of the Company, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or

declaration pursuant to the provisions of this Section 6.1, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration, if any), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement.

All rights of action and rights to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of

SECTION 8.8. *No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Held in Trust.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any builder thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee and may act as Trustee under other instruments under which obligations of the Company are outstanding.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of itself and the holders of the Trust Certificates.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

SECTION 8.9. *Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *Trust Certificates Deemed Not Outstanding.* In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any direction, notice, request, consent or waiver under this Agreement, Trust Certificates which are owned by the Company or an Affiliate (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, notice, request, consent or waiver, only Trust Certificates which the Trustee knows are so owned shall be so disregarded.

ARTICLE NINE

Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *Rights Limited to Parties and Holders of Trust Certificates.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon Successors and Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

SECTION 9.7. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 9.8. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

CHEMICAL BANK,

as Trustee,

By

Vice President

ATTEST:

.....
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By

Vice President—Finance

ATTEST:

.....
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 10th day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John L. Bervar
Notary Public

JOHN L. BERVAR
Notary Public, State of New York
No. 41-5303890
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1972

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 11th day of January, 1972, before me personally appeared W. S. Cook, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Galpine
Notary Public

ELIZABETH L. GALPINE (12224)
Notary Public, State of New York
No. 30-6451000
Qualified in Nassau County
Certificate Filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1972

SCHEDULE A**Description of Trust Equipment**

No. of Units	Description	Estimated Cost	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive	332,000	6,640,000
Total Estimated Cost			<u>\$35,993,300</u>

enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

SECTION 8.6. *Assumption of No Default; May Rely on Notices and Other Documents.* The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the default or Event of Default desired to be brought to the attention of the Trustee. As to any fact or matter, the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 8.7. *Money Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, without liability for interest thereon save as may be agreed upon between the Trustee and the Company.

Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and

any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by this Section 8.7 shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder or under any supplement hereto.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement or of any supplement hereto, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in such Investment Securities and at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including any premium and accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 5.4(B)(1) hereof, an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.8. *No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Held in Trust.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any builder thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee and may act as Trustee under other instruments under which obligations of the Company are outstanding.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of itself and the holders of the Trust Certificates.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

SECTION 8.9. *Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *Trust Certificates Deemed Not Outstanding.* In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any direction, notice, request, consent or waiver under this Agreement, Trust Certificates which are owned by the Company or an Affiliate (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, notice, request, consent or waiver, only Trust Certificates which the Trustee knows are so owned shall be so disregarded.

ARTICLE NINE

Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *Rights Limited to Parties and Holders of Trust Certificates.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon Successors and Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

SECTION 9.7. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 9.8. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

CHEMICAL BANK,
as Trustee,

By

Vice President

ATTEST:

.....
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By

Vice President—Finance

ATTEST:

.....
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 10th day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John L. Bervar
Notary Public

JOHN L. BERVAR
Notary Public, State of New York
No. 41-5303890
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1972

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 11th day of January, 1972, before me personally appeared W. S. Cook, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Galpine
Notary Public

ELIZABETH L. GALPINE (12224)
Notary Public, State of New York
No. 30-6451000
Qualified in Nassau County
Certificate Filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1972

SCHEDULE A**Description of Trust Equipment**

No. of Units	Description	Estimated Cost	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive	332,000	6,640,000
Total Estimated Cost			<u>\$35,993,300</u>